

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT RULES

CARTER, CUSTER, FALLON, GARFIELD, POWDER RIVER, ROSEBUD and TREASURE COUNTIES

RULE 1 - DEPARTMENT AND ASSIGNMENT OF CASES

A. The District Court is divided into two (2) departments. Department 1, with Judge Gary L. Day presiding, consists of Custer (except for Youth Court cases), Garfield and Powder River Counties. Department 2, with Judge Joe L. Hegel presiding, consists of Carter, Custer (Youth Court cases), Fallon, Treasure and Rosebud Counties. All actions filed shall initially be assigned to the presiding judge of the department in which the action is filed subject to transfer as set forth below. Once assigned, the presiding judge's name shall appear on all file covers and documents for service.

B. A petition for consolidation, pursuant to Rule 42(a), Montana Rules of Civil Procedure (MRCP), shall be filed in each action to be consolidated. The judge in whose department the initial action was filed shall determine whether consolidation shall be ordered and all actions thus consolidated shall be assigned to that department.

C. The work in the District shall be interchangeable between the judges thereof during the absence or disability of either of them or upon the request of either judge. Any judge making any order for a judge of another department will be presumed to have acted with the consent of that judge. Actions by one department relative to a case assigned to the other department shall not, by that fact alone, result in a transfer of the case.

D. Either judge may, with the consent of the other judge and after stating the basis therefor, transfer any action, matter or proceeding to the other department. The Clerk of Court shall provide notice of said transfer to all parties.

E. In the event of a disqualification, the first judge invited to assume jurisdiction shall be the other judge of the District, unless he has already recused himself or been disqualified. In the absence of judicial disqualification, no cause may be transferred from one department to the other without an order of approval, considered and signed by both department judges.

RULE 2 - SCHEDULE FOR LAW AND MOTION

A. Law and Motion shall be set and heard on the following schedule:
Department 1: Custer County: An effort will be made to set a Law and Motion schedule on Tuesday of each week. Garfield County: Thursday of the first full week of each month. Powder River County: Wednesday of the first full week of each month.

Department 2: Rosebud County: Every Monday and sometimes on Thursdays as needed. Fallon County: Tuesday of the first full week of each month, and as the Court's caseload warrants. Carter County: Tuesday of the first full week of each month. Treasure County: Thursday of the first full week of each month. Custer County: Second and fourth Fridays of each month.

B. The Court will hear uncontested matters, judgments by default, probate matters, criminal matters and appropriate ex parte matters. Matters which counsel expect will be contested or are expected to take more than fifteen (15) minutes should be scheduled with the legal assistant and the Clerk of Court. All matters shall be calendared with the Clerk of Court no later than 5:00 p.m. at least one (1) business day before Law and Motion day. If time permits, uncalendared matters may be presented and heard after all calendared matters have been heard. Uncontested or emergency matters may be presented to the Court at such other times as the Court is available and willing to hear them.

C. No matter may be placed on the Law and Motion calendar until all relevant supporting documents have been filed with the Clerk of Court and served pursuant to applicable rules.

RULE 3 - HEARINGS ON MOTIONS

A. When a counsel desires oral argument on a motion, other than a motion for summary judgment, he or she shall so state in a separate document entitled "Request for Oral Argument," including therein the reasons in support of the request for oral argument. The moving party shall include with the request for oral argument a proposed order granting oral argument. In the event the Court grants oral argument, the moving party shall schedule such argument with the appropriate Court personnel

and opposing counsel, and shall present an order setting oral argument for signature. If the Court determines on its own motion that oral argument would be beneficial to a determination of the motion, it shall so order and will notify the parties of the time and date of hearing.

B. Scheduled hearings on motions pending may be continued by the Court on its own initiative or upon the written motion of any party with notice to all adverse parties. All such motions to continue must be submitted in writing and accompanied by an appropriate formal order prepared for the Court's approval.

C. Setting and Continuing Hearings: 1. Where the parties have appeared, either personally or through counsel, the Court will neither set nor continue a hearing on a party's motion, unless the moving party first obtains dates the opposing party, or counsel if represented by counsel, is available, and has checked with the Clerk of Court or the judge's legal assistant to identify the earliest appropriate dates when all parties may attend. This information shall be certified in the written motion and the moving party shall retain appropriate documentation to support such certification. In the event that a moving party has unsuccessfully attempted to obtain such information from the opposing counsel or party, if not represented by counsel, the moving party shall certify to the extent of such efforts and that such information was not reasonably available, whereupon the Court may set the hearing.

2. Reference Uniform District Court Rule (UDCR) 3 concerning ex parte matters. See appendix for forms designed to meet the requirements of UDCR 3.

3. Reference MCA §§ 40-4-219 and -220 regarding motions to modify parenting plans.

D. Time settings for hearings on contested motions will be obtained from the judge's legal assistant and the Clerk of Court.

E. In order to avoid scheduling conflicts, all persons requesting non-judicial use of district courtrooms, jury rooms, libraries or judicial office spaces shall schedule such usage with the Clerk of Court.

F. The proponent of any motion filed with the Court must submit, contemporaneously with the motion, a proposed order granting the relief sought. If the proponent of the motion wishes for the Clerk of Court to mail the signed order to any party, the proponent shall also deliver properly pre-addressed and pre-stamped envelopes for all parties to receive a copy of the signed order.

G. The Court may establish time parameters for beginning and ending any hearing or trial. Unless prior Court approval is obtained, the parties should expect the Court to enforce the time limits set by the Court or stated by the parties at the time of scheduling.

H. Reference UDCR 2 for additional information.

RULE 4 - SERVICE OF PROCESS AND PAPERS; MAILING DUTIES

A. Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof exists as prescribed in the Montana Rules of Civil Procedure, or other applicable statute, shall be filed with the Clerk of Court promptly, and in all cases, before any action is to be taken thereon by the Court or the parties.

B. Except for criminal matters and cases involving court-appointments of counsel for dependent and neglect cases, whenever the Clerk of Court is required to furnish notice of any pleading, judgment or order, all necessary copies of such pleading, judgment or order shall be furnished to the Clerk of Court together with properly pre-addressed and pre-stamped envelopes.

C. Two originals of any order to show cause, temporary restraining order, or like order, together with a sufficient number of copies to be conformed for service or mailing to all parties, shall be presented to the Clerk of Court for the judge's signature. If the judge signs the orders, he or she will sign both as original orders. One original shall be retained as part of the file and the other shall be used for service.

D. Any counsel obtaining a judgment or decree shall immediately deliver it to the Clerk of Court for filing together with the required filing fee. Failure to comply with this requirement shall be deemed a contempt of court.

RULE 5 - SCHEDULING ORDERS; COMMUNICATIONS WITH THE COURT

A. No more than 120 days after the date of filing of a complaint in a civil (DV) or dissolution (DR) action, counsel for the plaintiff or petitioner shall file a written request for a scheduling order which shall be issued by the Court in accord with MRCP 16(b), unless all parties stipulate otherwise and the Court deems a scheduling order unnecessary in the

circumstances stipulated. Failure to file such a request in a timely manner may result in sanctions, including dismissal. Counsel for the defendant or respondent may also move for a scheduling order in his or her discretion.

B. The Court will not receive letters or other communications from counsel or parties that do not indicate on their face that copies have been sent to opposing counsel and any unrepresented parties.

C. No party shall discuss ex parte with the Court any substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in a disqualification of the judge for cause as well as imposition of sanctions against the offending counsel or party.

D. In the event the Court has under advisement any matter, including but not limited to a motion or decision in a bench trial, for a period of more than thirty (30) days, each party affected thereby shall file with the Clerk of Court a pleading entitled "Request for Decision" which shall state the date the matter was taken under advisement and shall request a decision thereon from the Court.

E. Following a scheduling conference and an order therein, the legal assistant and the Clerk of Court shall place said cause and such others as the Court shall direct upon the regular trial calendar. Notwithstanding the above, the Court may, in its discretion and upon such notice as the Court deems reasonable, set down for trial any cause coming to issue.

F. All the Court's scheduling shall be done in conjunction with the legal assistant and the Clerk of Court, especially in matters to be scheduled with short notice. Opposing parties shall be given reasonable notice of all matters set by the Court. The Court, on its own motion, may set such cases for trial on a date convenient to the Court upon an order giving the respective parties reasonable notice of the date said case will be tried. The foregoing rule shall apply in like manner where the presiding judge has been called in and assumed jurisdiction.

RULE 6 - TRIALS

A. Counsel:

1. All counsel shall together confer with the judge prior to trial.

2. Counsel shall have stipulated in the pre-trial order as to those exhibits that will be admissible without objection. Copies of exhibits for the bench are required in complex matters.

3. All exhibits are to be marked prior to trial or during recesses. Plaintiff/petitioner shall mark its exhibits with numbers, and defendant/respondent shall utilize letters.

4. Trial briefs shall be submitted as required in the pre-trial order.

5. When, after the day is fixed for the trial of any cause, either party desires a continuance, he or she shall give the opposing party five (5) business days' notice that application will be made therefor and the grounds thereof. For good cause, the time may be shortened. Continuance may be granted on the Court's own motion or upon motion of counsel or a party, if such a continuance does not inconvenience the Court in the process of the trial calendar. Continuances, even when stipulated to by counsel, will not be routinely granted. Continuances of any requirement established by the scheduling order shall only be allowed by Court order for good cause shown.

6. At least eleven (11) business days prior to the commencement of a civil or criminal jury trial, defendant's/respondent's counsel shall advise the Clerk of Court whether said trial will proceed such that the Clerk of Court has sufficient time to call a jury, or alternatively, to set other matters in the time slot set aside for a vacated, continued, or otherwise settled matter. Failure to comply with the requirements of this rule may result in the imposition of sanctions where appropriate.

7. During any contested hearing, no argument or motion to the Court, other than a formal objection, will be entertained unless counsel making the same first stands in his place to address the Court, and the Court grants a request for argument. Argument, when permitted by the Court, shall cease on completion of rebuttal.

8. The party whose duty it is to first offer proof in any trial or proceeding shall have the right to open and may close the argument. Should the adverse party waive argument, no rebuttal will be permitted.

9. In the examination of witnesses, only one counsel for each party will be permitted to examine or cross-examine the same witness, except by prior permission of the Court.

10. Counsel must stand at the lectern when talking, except when making objections. However, if the objection and discussion become lengthy, counsel shall then move to the lectern.

11. Counsel shall not use any exhibits or charts in an opening statement without first obtaining the Court's approval.

12. Counsel shall not stand between a witness and the jury.

13. Counsel shall not have a witness stand with his or her back to the court reporter.

14. Counsel's closing arguments will be no more than forty-five (45) minutes unless otherwise specifically permitted by the Court. Plaintiff's counsel must use at least half (½) of his or her time in the initial argument, and in the remaining time reserved for plaintiff's counsel's rebuttal, he or she may not address any matters not previously addressed in the initial portion of plaintiff's closing argument or in the defendant's closing argument.

15. Unless the Court allows otherwise, one counsel from each side shall stay in the courthouse during jury deliberations. Other counsel and the parties will remain available upon ten (10) minutes notice.

16. Court sessions normally will be held until at least 5:00 p.m. Therefore, parties must be sure to have a sufficient number of witnesses ready to testify such that neither the Court's nor the jury's time is wasted by an early adjournment due to a witness not being present to testify.

17. If counsel must make an argument outside the presence of the jury, he or she must inform the Court either before the jury is called in or a recess is taken.

18. The judge needs time to rule on objections. Therefore, counsel shall not proceed with questioning until the judge rules. Counsel may make arguments only with the judge's approval and usually outside the jury's presence. Objecting counsel is responsible for interposing the objection before the witness begins answering, otherwise the objection is untimely.

19. Offers of proof will be made, whenever possible, during recesses and outside the jury's presence.

20. Counsel, not the Court, is responsible for making his or her record. For example, if at a side bar, the Court orders counsel to terminate a particular line of questioning, then at the next opportunity outside the presence of the jury, counsel must recite on the record those matters occurring at side bar.

21. Counsel must treat one another, as well as the Court and its staff, with professionalism and civility, if not respect.

B. Witnesses:

1. Counsel must advise his or her witnesses to "speak up" when testifying.

2. Counsel may approach the witnesses and the bench only with the Court's permission.

3. Counsel is responsible for briefing his or her witnesses on matters which are inadmissible, such as the existence of insurance or the Court's ordered exclusion of particular matters.

4. If the Court has ordered witnesses to be excluded from the courtroom, counsel must advise his or her witnesses of that fact and further advise them not to discuss their testimonies with other waiting witnesses.

5. Any counsel, party, or witness who anticipates that any witness to be called at a trial by jury may refuse to answer a question on the basis that so doing may tend to incriminate him or her shall advise the Court prior to calling that witness to testify. Upon being so advised, the Court shall hold a hearing outside of the presence of the jury to determine if, in fact, such will be the case. The Court will then enter an appropriate order for the purpose of avoiding, if possible, "taking the 5th" in the jury's presence.

6. Without first obtaining leave of Court, a maximum of three (3) witnesses for each side is permitted to testify regarding a person's character in any case, whether civil or criminal.

7. Without first obtaining leave of Court, a maximum of three (3) non-expert witnesses for each side is permitted to testify regarding a person's parenting practices and abilities in any contested parenting proceeding.

C. Jury Instructions and Jury Issues:

1. Counsel shall provide the Court and opposing counsel with jury instructions and verdict forms at the start of the trial, or as otherwise allowed by the Court, and any additions as soon thereafter as possible. Counsel for all parties shall check the instructions to avoid duplication. The newest Montana Pattern Civil or Criminal Jury Instructions, as applicable, shall be used as the primary source. Instructions shall be on 8½" x 11" paper. See also UDCR 7.

2. Counsel shall ensure that the proposed instructions are correct with respect to gender and as to whether parties are singular or plural.

3. Instructions shall be numbered P# or D#, at bottom right corner of page. Below the instruction shall appear

"Given:

DISTRICT JUDGE".

(*Department 1: Counsel for each party shall provide the Court with an original of each instruction without citation of any authority at the bottom of the page.)

4. The Court will provide counsel with the pre-arranged order of instructions to be given.

5. At no time during the trial, except in voir dire, may counsel ask questions of or seek information from the jury.

6. During closing argument, counsel must stay a reasonable distance from the jury box.

7. Counsel for the parties must ensure that they themselves, their clients, and their witnesses remain apart from the jury at all times.

8. Counsel shall not repeat in voir dire those matters that the Court has already covered in remarks to the jury.

9. Counsel may not orally challenge any juror except for cause. Counsel shall exercise or waive all peremptory challenges orally in open court after the potential jurors are removed from the courtroom.

10. Jurors shall be allowed to take notes unless the presiding judge, considering the nature of the case, orders otherwise. No juror is required to take notes. The bailiff shall collect the jurors' notes at the end of each day and shall return the notes to the jurors at the beginning of the next day. Jurors shall be permitted to have their notes during deliberation.

11. Voir Dire:

(A) The length and conduct of voir dire examination shall not exceed one (1) hour per side without prior leave of Court.

(B) Only one (1) counsel for each party shall question the prospective jurors on voir dire.

(C) The proper purposes of voir dire are to select a panel which will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause. Accordingly, counsel shall not do any of the following:

1. Ask questions of an individual juror that are susceptible of being asked collectively.

2. Ask questions covered by and answered in the juror questionnaire, except to explore some answer in depth.

3. Repeat questions asked and answered.

4. Use voir dire for the purpose of attempting to instruct the jury on the law.

5. Use voir dire for the purpose of arguing the case.

6. Ask a juror what his or her verdict might be under any hypothetical situation, based upon expected evidence or otherwise.

D. In any case, whether civil or criminal, the Court will not consider for any purpose any stipulation between the parties unless it is either made in open court on the record, entered on the minutes, or made into a writing which is subscribed by either the party against whom it is sought to be enforced or by such party's counsel.

RULE 7 - COURTROOM TECHNOLOGY

A. Counsel planning to utilize the electronic evidence presentation system must inform the legal assistant or the Clerk of Court of that fact at least one (1) business day prior to the court date. Counsel should then confirm the availability and functioning of the system the day before the trial or hearing. Counsel must completely set up and test all electronic evidence presentation equipment prior to using it in any judicial proceeding.

B. Counsel is expected to utilize the electronic evidence presentation system when appropriate. Counsel using charts and photographs without the system may do so only with prior permission of the Court. If the Court grants permission, charts and photographs must be enlarged enough to be seen across the courtroom, mounted on stiff backing, and displayed from an easel provided by the offering counsel. Both counsel and witnesses must be prepared to stand to the side of the chart or photograph and to use a pointer during the trial.

C. At a time well in advance of the scheduled trial or hearing date, counsel unfamiliar with the electronic evidence presentation system shall advise the Clerk of Court and shall make arrangements to come to the courthouse at a time convenient to the Clerk of Court and the Court to receive the necessary training on said equipment.

D. Pursuant to the Montana 16th Judicial District Court of Custer County General Order 2002-3, counsel for Montana Legal Services and other qualified employees and legal interns with Montana Legal Services may and are authorized to represent clients and otherwise appear in all matters pending before the 16th Judicial District Court by video-conferencing. The Court retains the authority to require counsel or other qualified representative to personally appear in court concerning any specifically identified hearing, motion, conference, trial, or other matter associated with said cause.

E. Other counsel or parties may appear by video-conferencing only with prior permission of the Court.

RULE 8 - COURT RECORDS; COURTHOUSE FACILITIES

A. The Clerk of Court shall not permit any files or documents to be removed from the Clerk of Court's office without obtaining a receipt from any person removing any file or court record. The person removing the file or court record shall return it within twenty (20) days, and in any event, not later than two (2) business days prior to any scheduled Court activity.

B. The records and files in abuse/neglect actions shall not be withdrawn, examined, or inspected by anyone except as allowed under MCA § 41-3-205. Youth court records shall not be withdrawn, examined or inspected by anyone except as allowed under MCA §§ 41-5-215 and -216. Adoption records may not be withdrawn, examined or inspected by anyone except pursuant to an order of the Court.

C. No will, bond or undertaking shall be removed from the Clerk of Court's office under any circumstances, and neither shall a judgment be removed from the Clerk of Court's office before it is recorded.

D. Counsel shall file all original documents with the Clerk of Court and shall mail copies to the presiding judge at his resident office. Counsel shall indicate on the certificate of service that copies were mailed to the judge as well as to all others to whom copies were sent.

E. Counsel and other persons wishing to utilize the courtrooms, the jury room, or the law library for meetings, depositions, and video-conferencing shall contact the Clerk of Court to reserve the desired facility so as to avoid possible conflicts with Court matters or others who have already scheduled use of these courthouse facilities.

RULE 9 - FILINGS

A. Counsel shall file all motions and briefs with the Clerk of Court. If a fee is required, such as with a motion for substitution of judge, counsel shall pay the required filing fee at the time of filing the motion.

B. Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or any other pleading requiring the Court's leave, the moving party shall present the Clerk of Court with a copy of the proposed pleading. The Clerk of Court shall lodge the original document for which leave to file is sought. If the Court grants leave to file, the Clerk of Court shall file the original forthwith.

C. Except as provided in UDCR 4, discovery documents may not be filed with the Clerk of Court without prior leave of Court. Upon receipt of a deposition pursuant to UDCR 4, after leave of Court has been granted, the Clerk of Court shall file it in the open file, unless otherwise ordered. In the event the Court orders filing of discovery documents, the Clerk of Court shall receive such documents, note them upon the register of the action, and place them in a separate Court file, with the file number noted. After final judgment and the running of the time for appeal, the Clerk of Court shall notify counsel to retrieve the filed discovery within thirty (30) days. If counsel fails to retrieve the discovery documents, the Clerk of Court may destroy them.

D. When a demand for a jury trial is incorporated into a pleading, counsel is to so indicate in the title as well as the body of the pleading.

E. Any papers filed which do not conform MRCP 10 and 11 may be stricken by the Court on its own initiative upon such terms as appear to the Court to be just.

F. When a party obtains an order or arrest warrant from the Court, the party shall immediately present the order or warrant to the Clerk of Court for filing.

G. When counsel wishes to have only one subpoena issued, he or she shall deliver one original subpoena and one copy of the subpoena to the Clerk of Court for issuance. When counsel wishes to have more than one subpoena issued, he or she shall present one original subpoena for each person or entity to be served and one praecipe listing the name of each person or entity for whom or which a subpoena is to be issued.

H. All briefs required by rule, regulation, or order to be filed by a date certain shall be filed by the required date. Any requests for an extension of time shall be filed and served prior to the due date. The Court may strike briefs not filed in a timely manner and impose other appropriate sanctions.

I. Individual briefs shall not exceed twenty-five (25) pages in length, exclusive of indices and appendices, without prior leave of the Court.

J. All filings shall begin on the eighth single-spaced line. Full justification may not be used. Margins shall be no less than one inch on all four sides. Point size shall be at least 12, and the only acceptable fonts shall be "Times New Roman" and "Courier". Except where the rules of citation allow otherwise, the text of all filings shall be double-spaced or one and one-half space. A page number shall not appear on page one. The title of each document shall not appear below the parties' names, but instead shall be formatted as provided by UDCR 1 and UDCR Form 1.

K. Counsel shall ensure that any filing that is more than one page in length does not leave one page with a "dangling signature line," i.e., a page with only the date and/or a line for the judge's signature.

L. Citations to authority must include photocopies of any cases cited which do not appear in Pacific Reporter or Montana Reports.

M. All documents of fifteen (15) pages or more filed with the Clerk of Court shall be pre-punched at the top and stapled in order to facilitate filing.

N. All proposed orders shall omit the submitting counsel's name and address from the top left-hand corner.

RULE 10 - SETTLEMENT CONFERENCES AND PRE-TRIAL

A. All civil actions set for trial may be subject to a settlement conference upon order of the Court for cause shown. All criminal actions set for trial may be subject to a resolution conference as set by the Court.

B. If the Court determines that a pre-trial conference is unnecessary in any cause, the Court will order the cause to be tried without a pre-trial order.

RULE 11 - ATTORNEYS

A. Unless appearing specifically on behalf of one counsel of record, no counsel may participate in any proceedings in the case until the counsel's name has been entered of record as one of counsel.

B. In case of a dispute over a counsel's authority to represent a party in a pending proceeding, the Court will not recognize the right of that counsel to appear in such proceedings unless he or she has a written retainer signed by the party and filed in the record of the case. Alternatively, the Court will recognize the authority of counsel to appear on behalf of a party that has personally signed his or her own pleadings when no other counsel has ever appeared therein on the party's behalf.

C. Counsel may not withdraw from any case, civil or criminal, except by consent of the client or by leave of Court after notice is served on the parties and opposing counsel. This provision shall be applied in conjunction with MCA §§ 37-61-403 through -405 and UDCR 10.

D. Counsel shall not address a witness on the stand in any manner except to propound the question to which an answer is desired. Opposing counsel shall not address one another during a judicial proceeding except by permission of the Court.

E. From one year after the time for appeal from any final judgment or decree in a civil matter has run, the presumption shall be that any party previously represented by counsel is no longer represented by such counsel in that particular matter. This rule shall not be construed to prohibit continued representation in such matter if the client and attorney agree. Neither is the rule intended to prohibit earlier termination of the attorney-client relationship upon notice.

RULE 12 - ATTORNEY'S FEES

In all cases, contested or uncontested, where attorney's fees are requested in the pleadings, counsel shall submit competent evidence to the Court such that the Court might determine reasonable attorney fees for the services rendered. Not less than ten (10) days prior to the date of hearing for determination of attorney fees, the party seeking an award of attorney fees shall file and serve an affidavit itemizing the claim. Within five (5) business days thereafter, the opposing party shall file a motion for hearing thereon. Failure to file the motion is deemed a waiver of the right to a hearing on attorney fees. In a contested proceeding, receipt of evidence pertaining to attorney fees may be deferred until the final decision or order on the merits of the case has been issued.

RULE 13 - PHOTOGRAPHY, TELEVISION AND MEDIA

A. Photographing, recording, televising, or otherwise broadcasting in the courtroom or the areas immediately adjacent thereto while Court is in session or during recesses between sessions are permitted only with prior notice to, and specific permission of, the presiding judge.

B. All media personnel and media equipment shall remain stationary behind the bar so as not to disrupt the judicial proceedings. Media equipment operators shall not utilize flash devices, lighting equipment, large microphones, or other devices which could potentially disrupt the proceedings.

C. Members of the jury shall not be photographed, and neither shall their images be televised in any manner. A witness's photograph or image shall not be used in any manner without his or her permission.

RULE 14 - FACSIMILE FILINGS

A. Counsel may file any document with the Clerk of Court by facsimile if that document, pursuant to the Montana rules of procedure, may also be filed by mail.

B. The date and time of receipt of the transmission by the Clerk of Court shall be the date and time of filing. If the original is not served on the same day as the facsimile transmission, service of the facsimile document must be made as provided in MRCP 5(e). The Clerk of Court shall not file any document that does not contain all required signatures and/or seals.

C. The certificate of service for any document filed by facsimile must reflect that the document was filed with the Clerk of Court by facsimile and the date of such facsimile filing. Unless an order of Court is obtained extending the time, counsel's failure to deliver to the Clerk of Court the signed original within five (5) business days of the Clerk of Court's receipt of the facsimile copy shall cause the facsimile filing to be treated as void.

D. The use of facsimile equipment does not change or delay the required payment of associated fees. Counsel filing any document via facsimile shall pay the required fees in the manner and within the time required by the Clerk of Court. Counsel shall also pay any costs associated with the use of facsimile equipment and telephone services.

RULE 15 - ADOPTION MATTERS

In all adoption matters, the investigation required by MCA §§ 42-3-201, 42-3-301, 42-4-106, 42-4-113, or 42-4-209, will be ordered by the Court unless excused by MCA §§ 42-3-212, 42-4-205(3), or 42-4-309. Counsel shall present to the Court an order for the investigation. The investigation will then be considered for waiver by the Department of Public Health and Human Services if the petitioner is a stepparent or a member of the child's extended family. Whenever the Court signs an order for such an investigation by the Department of Social and Rehabilitative Services, counsel shall mail or deliver a conformed copy of the petition for adoption and the order for investigation to the appropriate Department of Public Health and Human Services agency.

RULE 16 - DISSOLUTION/PATERNITY ACTIONS

A. At the time of or prior to the time fixed for hearing upon any application for temporary maintenance or child support, or other matters pendente lite, modification proceedings, or pre-trial hearings on contested domestic relations matters, each of the parties to a domestic relations action shall submit to the Court an affidavit in the form hereinafter set forth, including the questions hereinafter set forth and answers thereto:

_____, being first duly sworn, deposes and says: That he/she is the petitioner/respondent in the above entitled action; that he/she has fully and fairly stated the facts of the case in order to verify the belief that he/she has a good and sufficient cause of action/defense, and that he/she makes the following statements of fact: (Here set forth information in the following manner and form.)

1. General Background Information.
 - a. Name
 - b. Address
 - c. Date of birth
 - d. Date of marriage and date of separation
 - e. Employment and description of duties
 - f. Pay period and amount of pay
 - g. Itemized deductions each pay period
 - h. Necessary monthly expenses showing portion attributable to a minor child or children
 - i. Education
 - j. Health

- k. Future employment plans with estimated income
 - l. Assets with assigned value and basis of value
 - m. Liabilities
 - (1) Name and address of each creditor
 - (2) Amount owing to each creditor and repayment schedule
 - n. Statement of amounts received during marriage from inheritance, gifts, insurance proceeds, etc.
2. If the Spouse is seeking primary care of children, then include:
 - a. Amount of child support requested
 - b. Hospitalization and medical plan, including amounts not covered by insurance requested
 - c. Details of visitation rights requested
 - d. Calculations justifying child support per the child support guidelines
 3. If the Spouse is not seeking primary care of children, then include:
 - a. Amount of child support party is willing to pay
 - b. Hospitalization and medical plan, including amounts not covered by insurance party is willing to pay
 - c. Description of visitation rights requested
 - d. Calculations justifying child support per the child support guidelines
 4. Spouse seeking maintenance (omit if not asking for maintenance)
 - a. Amount
 - b. Duration
 - c. Reasons
 5. Spouse opposing maintenance (omit if not appropriate)
 - a. Reasons
 - b. Alternative to maintenance
 6. Proposed property settlement with assigned values and liabilities (Indicate if proposed property settlement is in lieu of or in addition to maintenance in the appropriate case.)
 7. Attorney fees and costs if requested from other party
 8. If appropriate, include the following:
 - a. Copies of federal and state income tax returns
 - b. Financial Statements for the past three years
 - c. Any reports that have been prepared by experts
 - d. If expert witnesses are anticipated, set out summary of testimony
 - e. Other witnesses - set out summary of testimony
 - f. If legal issues are going to be presented to the Court, specify the issues
 - g. Estimate the time required for formal hearing

B. All parents shall satisfactorily complete the current parenting education program sanctioned by the 16th Judicial District Court. Prior to the final hearing, the issuance of a final decree for dissolution of marriage, or the issuance of a final parenting plan, each parent shall complete the Court-approved co-parenting education series and file certification of completion with the Court.

C. In accord with MCA § 40-4-219, the court may amend a prior parenting plan if it determines that new or unknown facts have arisen which cause a change in the child's circumstances and an amendment is necessary to serve the child's best interests. A party seeking modification of an existing plan must file a proposed amended parenting plan together with the motion to amend. The party responding to the motion to amend must also file a proposed amended parenting plan with the response to the motion to amend. See MCA § 40-4-219(7).

D. Unless the parties stipulate to an interim or amended parenting plan, the moving party must submit an affidavit setting forth facts supporting the proposed amendment. The opposing party then has an opportunity to present counter affidavits, and based on the affidavits, the Court will determine whether, based on the best interests of the child, "adequate cause for hearing" exists. If not, the Court denies the motion. If adequate cause does exist, the Court will issue an order to show cause requiring the parties to appear and show why the requested interim or amended parenting plan should not be granted. MCA § 40-4-220(1).

E. The Court may only issue an interim parenting plan ex parte if it finds either: 1. No previous parenting plan has been ordered by the Court, and it is in the best interests of the child, or

2. Although a previous parenting plan has been ordered, an emergency situation exists in the child's current environment that endangers the child. MCA § 40-4-220(2).

Note: UDCR 3 applies to this ex parte application. Opposing counsel, if any, should be notified of the time and place of the application; the Court should be notified whether opposing counsel objects, and the Court should be provided with sufficient copies of orders for service.

F. Montana Code Annotated § 25-1-201 provides for a \$120 filing fee for filing a contested petition (motion) for amendment of a final parenting plan. Pursuant to MCA § 40-4-219(7), a prior parenting plan means a parenting determination contained in a judicial decree or order made in a parenting proceeding. Therefore, a final custody decree or order qualifies as a "final parenting plan" in determining whether a new filing fee is payable. A motion to amend parenting plan (custody decree) is deemed contested unless both parties stipulate to the motion at the time it is made.

G. After entry of an order for child support that is to be collected by Child Support Enforcement Division, counsel for the party to receive the child support shall give notice to Child Support Enforcement Division in accord with Montana law.

H. When child support is ordered to be paid directly to the Office of the Clerk of Court, counsel for the party ordered to pay child support shall inform their client to include an additional \$2.00 in each payment in order to cover the associated costs, including the check, ledger sheets, and postage. The proposed decree shall include in the final order the child support obligor's obligation to include the additional \$2.00 in each child support payment.

I. A completed Vital Statistics reporting form shall be presented to the Clerk of Court when filing the Final Decree of Dissolution.

RULE 17 - CRIMINAL ACTIONS

A. Defendants desiring Court-appointed counsel due to inability to pay for counsel shall file a sworn Financial Affidavit. The Court shall determine the eligibility of every defendant requesting Court-appointed counsel or a public defender in accordance with MCA § 46-8-111. The Financial Affidavit form is available from the county attorney's office, and in most cases, the defendant may be served with said form at the same time he or she is served with the charging documents. Other than those employed or contracted as public defenders, Court-appointed counsel representing indigent defendants shall be compensated at the rate not to exceed the current public defender rate. Larger expenses may be incurred only after Court-appointed counsel receives the Court's authorization.

B. All "Just/Matt" notices or notices of intent to introduce evidence of prior acts or crimes must be brought to the attention of the Clerk of Court at the time the notices are filed. The Clerk of Court shall seal the notices and mark them as follows:

- (1) All notices to persistent offenders shall be marked as "Notice #1";
- (2) All notices of confession shall be marked as "Notice #2"; and
- (3) All notices of other crimes to be introduced shall be marked as "Notice #3".

C. After the defendant enters a plea of "not guilty", the Court shall set an omnibus hearing. Prior to the time set for omnibus hearing, counsel for the prosecution and defense shall meet privately and attempt to stipulate to the contents of the Court-approved omnibus form which shall be submitted for the Court's final approval prior to the date set for the omnibus hearing.

D. Prior to the date of the omnibus hearing, the prosecutor and defense counsel must attempt plea negotiations. The omnibus check sheet shall include a declaration that the parties have discussed a possible plea agreement.

E. Pursuant to MCA §§ 25-10-201(9), 46-8-113, 46-18-201(3), and 46-18-232, the Court may include the reasonable and necessary costs of defense and of prosecution in the judgment in criminal cases.

F. Upon motion of a defendant who has successfully completed his or her deferred imposition of sentence, the Court may order that the action be dismissed. Evidence of successfully completing deferral requirements must be submitted to the Court along with a proposed order.

RULE 18 - CLOSING ESTATE WITH FOREIGN PERSONAL REPRESENTATIVE

Upon completion of those probate matters in which a foreign personal representative is qualified under the provisions of MCA §§ 72-4-303 et seq., counsel or the foreign personal representative must file with the Court a Foreign Personal Representative's Sworn Statement to Close Estate.

Effective December 16, 2003